

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KHALID THABET,

Defendant-Appellant.

UNPUBLISHED

March 13, 2003

No. 232230

Wayne Circuit Court

LC No. 00-006042

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of kidnapping, MCL 750.349, first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(c), and second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(c). Defendant was sentenced to concurrent prison terms of 10-1/2 to 15 years for the kidnapping conviction, twelve to twenty-four years for the CSC I conviction, and five to fifteen years for the CSC II conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise from allegations that defendant aided and abetted codefendant Adel Thabet and a third assailant in kidnapping and sexually assaulting an eleven-year-old victim and a fourteen-year-old victim. At trial, defendant denied any wrongdoing.

I

Defendant first argues that the trial court denied him the right to present a defense by precluding evidence that the eleven-year-old victim tried to evade coming to court to testify against him.¹ We disagree.

This Court reviews a trial court's evidentiary rulings and limitation of cross-examination for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000); *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude there was no justification or excuse for the ruling. *People v Ullah*, 216

¹ The codefendant raises the same issue in his appeal.

Mich App 669, 673; 550 NW2d 568 (1996). A decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *Sabin (After Remand)*, *supra*, 463 Mich 67.

Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388-389; 582 NW2d 785 (1998). However, even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403.

Further, a defendant's constitutional right to present a defense and confront his accusers is secured by the right to cross-examination guaranteed by the Confrontation Clause. US Const, Am VI; Const 1963, art 1 § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). However, the right to present a defense is not absolute. See *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984); *People v Arenda*, 416 Mich 1, 8; 330 NW2d 814 (1982). A witness may be cross-examined on any matter relevant to any issue in the case, *People v Federico*, 146 Mich App 776, 793; 381 NW2d 819 (1985), but neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject. *Adamski*, *supra*. Rather, a court has wide latitude to impose reasonable limits on cross-examination based on concerns such as prejudice, confusion of the issues, or questioning that is only marginally relevant, among others. *Id.*; *Canter*, *supra*.

The trial court did not abuse its discretion by precluding the cross-examination of the eleven-year-old victim regarding her reluctance to come to court. Based on the defense's argument in the lower court, defendant sought to demonstrate that the eleven-year-old victim's unwillingness to come to court supported a finding that she had falsely accused him, and was reluctant to further perpetuate the lie. We agree with the trial court that the proffered evidence was not relevant. The fact that an eleven-year-old victim of a sexual assault is reluctant to testify does not have a tendency to make it more likely that she was perpetuating a lie. To the contrary, the proffered evidence could have easily supported an inference that the victim was being truthful and was apprehensive or fearful of facing her assailants. In short, defendant has failed to persuasively demonstrate how evidence relating to an eleven-year-old sexual assault victim's reluctance to come to court shows that she fabricated the charges against him, without more information. MRE 401. As such, the inference defendant is trying to draw between the victim's reluctance to come to court and the victim being untruthful is too tenuous and may have confused the issues. MRE 403.

We also reject defendant's claim that the trial court's evidentiary ruling deprived him of his constitutional right to present a defense. The trial court's ruling did not amount to a blanket exclusion of all evidence challenging the victim's credibility. In fact, defense counsel cross-examined the victim at length. Moreover, contrary to defendant's implication, evidentiary rulings do not ordinarily rise to the level of a constitutional violation. See *Crane v Kentucky*, 476 US 683, 690; 106 S Ct 2142; 90 L Ed 2d 636, 645 (1986). Therefore, we are not persuaded that the trial court abused its discretion by precluding the challenged evidence.

II

Defendant's final claim is that he is entitled to a new trial because the prosecutor improperly commented on the possible disposition of defendant after the verdict during closing argument. We disagree.

Because defendant did not object to this statement below, this Court reviews this unpreserved claim for plain error affecting defendant's substantial rights, i.e., affecting the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

It is well established that neither counsel nor the court should comment on the possible disposition of a defendant after the verdict. *People v Szczytko*, 390 Mich 278, 289; 212 NW2d 211 (1973); *People v Torres (On Rehearing)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). Here, during closing argument, the prosecutor commented that a defendant convicted under an aiding and abetting theory may be sentenced differently depending on his level of involvement in the crime, and that the sentencing court can consider the fact that a defendant was convicted as an aider and abettor. These comments were not proper. *Szczytko, supra*, 390 Mich 289; *Torres (On Rehearing), supra*, 222 Mich App 423. However, as previously indicated, defendant did not object to the remarks, and thus, our review is limited to plain error affecting substantial rights. *Carines, supra*.

Viewed in context of the complete closing argument, the prosecutor's comments did not affect defendant's substantial rights. The challenged comments occurred at the end of a lengthy discussion of the evidence, involved only a brief part of the argument, and was not so inflammatory that defendant was prejudiced. Further, when discussing the theory of aiding and abetting during closing argument, the prosecutor told the jury that it should not be concerned with the defendants' dispositions. The prosecutor also asked the jury to compare all the evidence, and follow the law as the judge directs. Moreover, the trial court's instructions that possible penalties should not influence the jury's decision, that the lawyers' comments are not evidence, that the case should be decided on the basis of the evidence, and that the jury was to follow the law as instructed by the court were sufficient to cure any prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001), citing *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995). Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). In sum, defendant has failed to show a plain error affecting his substantial rights. *Carines, supra*. Accordingly, reversal is not warranted on the basis of this unpreserved issue.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot